IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

CWP NO.4053 of 2007
Date of Decision: May 08,2007

Sunil Kumar No.233/FBD son of Sh.Net Ram, resident of H.No.935, Sector 23-A, Chandigarh.

....Petitioner

Vs.

1. State of Haryana through Chief Secretary to Government of Haryana, Civil Secretariat, Chandigarh.
2. The Director General of Police, Sector-6, Panchkula, Haryana.
3. The Inspector General of Police, Gurgaon Range, Gurgaon.
4. Superintendent of Police, Faridabad (Rural).
5. EHC Nasib Khan No.173/FBD C/o Superintendent of Police, Faridabad (Rural) HQ at Palwal.

...Respondents

Coram: **Hon'ble Mr.Justice Ashutosh Mohunta**
Hon'ble Mr.Justice R S Madan

Present: Mr.SN Yadav, Advocate
for the petitioner.

Dr.Anmol Rattan Sidhu, Additional Advocate General, Haryana
with Mr.Deepak Jindal, Assistant Advocate General, Haryana.

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R S MADAN, J.

By filing the present writ petition under Articles 226/227 of the Constitution of India, the petitioner seeks to quash the selection list Annexure P6 dated 6-3-2007 of B-1 vide which the private respondent was selected for the course and the claim of the petitioner was ignored despite of the fact that he was senior in merit.

It is further the case of the petitioner that in the year 2001, Punjab Police Rules have been amended and as per amendment, 55% seats are reserved for B-1 on the basis of test-cum-merit, 35% seats are reserved for seniority-cum-fitness and 10% seats are reserved for sports quota and outstanding performance. The eligibility under 35% quota as per the amended Rules Clause 2(ii) under the age of 40 years has been completed. After the amendment of Rule 13.7, the respondent-department was required to prepare the selection list under 35% quota of eligible candidates as per the merits obtained by the candidates. In CWP No.7952 of 2004 titled as Naresh Kumar Vs. State of Haryana, the Division Bench of this Court held the applicability of the principle of seniority-cum-fitness for determining the entitlement of the Constable to be placed on list B-1 i.e. for being deputed to the Lower School Course, the senior has to be placed on list B-1 as a matter of preference.

The grievance of the petitioner is that he and private respondent No.5-Constable were fully eligible as per the Punjab Police Rule 13.7 of 1934. Since the date of enrollment of both the candidates is same i.e. 8-12-1988 and the petitioner being higher in merit was shown in seniority list at Sr.No.19 whereas private respondent No.5 was shown at Sr.No.20. The Inspector General prepared the list under 35% quota in which the claim of the petitioner was ignored.

Notice of this petition was given to the respondents, who filed the written statement.

It is pleaded by way of preliminary objections that on 13-2-2007-respondent No.2 issued a letter No.1600-37/T-II/Panchkula dated 13-2-2007 addressed to all the concerned authorities and issued instructions

regarding selection of Constables for B-I course against 35% quota. For this purpose, Department Promotion Committee was set up to prepare the fair seniority-cum-merit list for selection of 35% quota on the basis of criteria i.e. amended Punjab Police Rules 13.7 (Clause 11) as well as on the basis of judgment of this Court passed in CWP No.7952 of 2004 titled as **Ct. Naresh Kumar No.684/RTK Vs. State of Haryana and others** passed on 05-11-2004 by the Division Bench of this Court**.**

It is further pleaded that Annexure P5 was the seniority list, which was sent to the Inspector General, Gurgaon Range with the direction that the seniority-cum-merit of candidates against 35% quota for B-I course is not in accordance with the instructions of the Hon'ble High Court as well as the instructions conveyed by Director, General of Police vide memo No.1600-37/A-3 dated 13-2-2007. Rule 13.7 of the Punjab Police Rules is reproduced as under:-

> *"If at the time of selection for admission in list B-I, the score of two constables is found to be equal, then the constable who is senior in service shall be selected for admission to list B-I. Further, in case, two constables who have equal scores and the same seniority, then the constable who is higher inter-se-merit in the recruits course shall be brought on list B-I."*

We have examined merit list (Annexure P5) of the candidates, prepared on the basis of seniority-cum-fitness for the year 2007 and noticed that Sunil Kumar-petitioner was on the merit list at Sr.No.91/929 whereas respondent No.5-Nasib Khan was at Sr.No.22/929. Both were appointed on the same date i.e. 8-12-1988. The petitioner being elder in age was shown senior to respondent No.5. So far as merit is concerned

Nasib Kahn-respondent No.5 was found to be more meritorious and he secured 22nd position at the time of his selection as Constable.

Moreover, Nasib Khan had undergone the Drill test and was found much better in physical fitness and other activities carried out at the time of selection. He secured six marks. Sunil Kumar-petitioner had undergone Commando Tear Smok and secured 4.50 marks. Therefore, respondent No.5 was found higher in merit.

Keeping in view the merit of respondent No.5 as per Rule 13.7 of the Punjab Police Rules, he was selected for B-I course. The petitioner cannot claim himself to be more meritorious than respondent No.5. Therefore, he has no claim to be considered for B-I course by claiming preference over respondent No.5.

In view of the above observations, we do not find any merit in the writ petition and the same is hereby dismissed.

(R S MADAN)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

May 08, 2007
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